



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST  
CHICAGO ILLINOIS 60604

REPLY BY AIRMAIL

SEP 25 1984

MEMORANDUM

SUBJECT: Proposed Settlement with Bankrupt Potentially Responsible Party

FROM: Roger Grimes *Roger Grimes*  
Assistant Regional Counsel

TO: Mary A. Gade, Chief  
Solid Waste and Emergency Response Branch

By means of this memorandum, I am recommending that the Agency approve a settlement with Taracorp, Inc., a potentially responsible party (PRP) associated with the CERCLA site owned by Taracorp and located in Granite City, Illinois. The conceptual framework of the settlement proposal was arrived at during a negotiating session on September 21, 1984, in Atlanta, Georgia. The settlement would be made a part of the reorganization plan to be confirmed by the bankruptcy court in the Northern District of Georgia.

Background Information

Taracorp is the owner-operator of the Granite City, Illinois facility at which is located lead smelting equipment and a fabrication plant. The site has been in existence for approximately 80 years and was owned and operated during the great majority of its life by National Lead Industries (now known as NL Industries, Inc.). Taracorp has owned the site only since 1979, and the smelting operation (from which the environmental problems emanate), has been closed down since early 1982. There are approximately eight additional parties (which may be PRPs) which dealt with NL during its ownership of the facility. Many of these entities are large corporations (Delco-Remy and Gould, Inc., for example) which sold materials to NL for smelting.

Realizing that it is the "primary" PRP, NL has come forward with a scope of work and a work plan for conducting an RIFS at the site. We have exchanged drafts of a 106 order, and it appears likely that NL will undertake the full responsibility for conducting the RIFS.



The site has been proposed for inclusion in the next update of the National Priorities List which is anticipated in the near future.

On October 1, 1982, Taracorp filed a Chapter 11 petition in the Bankruptcy Court for the Northern District of Georgia, where it is incorporated. Under the Chapter 11 proceeding Taracorp is seeking to reorganize and continue to do business. Recently, two foreign businesses have indicated an interest in the purchase of the Granite City facility, but are extremely hesitant to buy into a plant with substantial environmental problems.

In the past few weeks, there have been filed in the bankruptcy court two separate reorganization plans; one by the primary creditor, General Electric Credit Corporation (GECC) and one by the debtor, Taracorp. A hearing has been set in the bankruptcy court for late October on those reorganization plans. Once confirmed by the court the reorganization plan will essentially determine how Taracorp will conduct its business and the government will not be able to easily press environmental claims after the confirmation of the plan.

My recommendation is that the government make a present settlement based on the conceptual framework described below, and have that settlement factored into the reorganization plan which will then be certified by the court. We can continue to deal with NL for the RIFS and the eventual cleanup of the environmental problems.

#### Description of the Settlement

Based on the relative lengths of time that the facility was operated by Taracorp and NL (approximately 3 years versus 60 years), it is clear that on a "time-proportional" basis, NL has a much greater responsibility for the environmental problems at the site than does Taracorp. In addition, settlement with Taracorp would not preclude the government from seeking, under the principles of joint and several liability, full recovery from NL and possibly the other PRPs. Considering all of these factors, the essential elements of the Taracorp settlement would be the following:

1. Tarcorp would pay a total of \$150,000 up front to the government agencies (to be divided between the State and the U.S. EPA).
2. Taracorp will pay \$7,500/month until such time as the total amount of those payments, when added to the \$150,000 equal 10% of the total cost of the entire project; i.e. the cleanup.

3. In the event that Taracorp desires to sell the facility prior to completion of the RIFS (when the estimated cost of the cleanup will be known) Taracorp will pay the remaining balance between the amounts paid in pursuant to 1. and 2. above and \$550,000. This balance will come directly from the sale price.

This settlement has several advantages for the environmental agencies. First, a substantial initial amount of cash comes to the agencies up front. Second, that initial payment will be followed by an "open ended" payment schedule which will terminate only upon Taracorp's payment of 10% of the total cost of cleanup. This is a critical element because it essentially represents a present decision that in no event will Taracorp be liable for more than 10% of the cleanup costs, whatever they may turn out to be. Finally, it provides for the agencies in the event that Taracorp wants to sell the facility. This is important in that the value of the facility for commercial purposes goes up substantially if the environmental problems are alleviated. Therefore, if Taracorp is able to demonstrate to a prospective purchaser that the environmental problems have been resolved, then there is a much greater likelihood that Taracorp can make a sale of the plant. During the negotiating session, Taracorp indicated that it had no present buyer, but nonetheless the agencies representatives wanted to assure that Taracorp could not make a "profitable" sale of the facility in the future, and be able to keep the proceeds from going to the environmental problems. The third provision of the settlement proposal will address this possibility.

#### Actions Needed

The success of this settlement requires that appropriate language can be drafted to embody the agreement into the reorganization plan for the bankruptcy court. At the end of the negotiating session on September 21, it was decided that the Taracorp lawyer and the Georgia attorney hired by the State of Illinois would draft language to be put into a letter which would be sent from Taracorp to the government agencies expressing in much greater detail the terms of the agreement. This should be done by approximately September 25. If agreement can be reached as to the language, then it will be inserted into Taracorp's plan of reorganization which will be the subject of the hearing in late October.

cc: Ullrich  
Schaefer  
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Bartelt  
Diefenbach  
O'Toole